United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 19-1982**
	)	**Issued: May 18, 2020**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, New Orleans, LA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 30, 2019 appellant filed a timely appeal from a September 9, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish that an injury occurred in the performance of duty on July 7, 2019, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided to the Board includes evidence received after OWCP issued its September 9, 2019 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On July 7, 2019 appellant, then a 38-year-old postal support employee clerk, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury to his lower back on that day at approximately 3:00 a.m. when pushing empty wires for six hours while in the performance of duty. On the reverse side of the claim form, appellant's supervisor indicated that he was not present when appellant's injury occurred, but that, per appellant's statement, he injured his back while in the performance of duty. Appellant stopped work on the date of injury and returned to work on July 11, 2019.

OWCP also received an illegible statement from appellant regarding the alleged July 7, 2019 incident.

The record also contains the first page of an authorization for examination and/or treatment (Form CA-16) dated July 7, 2019 from the employing establishment, which indicated that appellant was authorized to receive treatment for a back injury sustained that day.

In July 8, 2019 medical report, Dr. Rahul Prasankumar, Board-certified in emergency medicine, noted that appellant was treated in the emergency department on July 7, 2019. He recommended that appellant "return to work after being cleared by a follow-up physician." Dr. Prasankumar recommended two days of rest and no heavy lifting until cleared by pain management.

In an unsigned, undated duty status report (Form CA-17), appellant's supervisor noted an injury date of July 7, 2019 as a result of pushing heavy equipment and empty wires. Appellant also submitted a continuation of pay (COP) nurse report dated July 22, 2019, noting work restrictions for the period July 11 to 17, 2019.

In a development letter dated July 23, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a factual questionnaire for completion. OWCP afforded appellant 30 days to respond.

In an August 2, 2019 Form CA-17, appellant's supervisor noted that appellant injured his lower back after pushing and pulling wires. Dr. Ronald Segura, Board-certified in pain medicine, noted that appellant suffered from neck and back pain with radiculopathy. He diagnosed cervical and lumbar disc herniations and facet joint syndrome. Dr. Segura provided work restrictions of intermittent lifting no more than 10 to 15 pounds and noted that appellant would need a few days to recover following various spinal procedures.

In a medical report of even date, Dr. Segura again noted that appellant sustained multiple herniated discs in his cervical and lumbar spine and had been incapacitated from work beginning July 18, 2019 as a result of his conditions. He further noted that appellant had undergone several spinal procedures to treat his conditions and required time off from work to heal.

In an August 29, 2019 return to work status report, Mia Trupiano, a nurse practitioner, released appellant to work beginning September 1, 2019 with restrictions for pushing and pulling no more than 40 pounds.

By decision dated September 9, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the July 7, 2019 employment incident occurred as alleged. It concluded therefore that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[8] The employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a case has been established.

[3] *Supra* note 1.

[4] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[9]

ANALYSIS

The Board finds that appellant has established that the July 7, 2019 incident occurred in the performance of duty, as alleged.

Appellant filed his traumatic injury claim on July 7, 2019 and indicated that, on that date, at approximately 3:00 a.m., he sustained a lower back injury as a result of pushing and pulling empty wires for hours. On the reverse side of the claim form, appellant's supervisor indicated that, while he had not witnessed the alleged employment incident, appellant reported to him that he injured his back that day, while in the performance of duty, in the manner described in his statement. He further noted that appellant initially stopped work the same day of the alleged employment incident and sought medical treatment that day.

In a Form CA-16, the employing establishment noted that appellant was injured on July 7, 2019 the date he alleged that the employment incident occurred, and authorized medical treatment for a back injury. Additionally, in Form CA-17s received by OWCP in July and August 2019, the employing establishment continued to note appellant's date of injury as July 7, 2019 and described the mechanism of injury as prolonged pushing and pulling of empty wires and heavy equipment, which is consistent with his account of the alleged employment incident.

Additionally, in a medical report dated July 8, 2019, Dr. Prasankumar confirmed that appellant was treated in the emergency department on July 7, 2019 the same date in which he alleged the employment incident occurred. Further, Dr. Segura repeatedly noted appellant's complaints of neck and low back pain related to a July 7, 2019 employment incident involving prolonged pushing and pulling of heavy equipment. He diagnosed cervical and lumbar disc herniations and facet joint syndrome and recommended that appellant return to work with restrictions following a recovery period.

The Board finds that appellant's description on the Form CA-1 and the July 7, 2019 Form CA-16 and Form CA-17s are sufficient to establish that the July 7, 2019 employment incident occurred at the time, place, and in the manner alleged. Appellant provided a consistent account of the mechanism of injury that has not been refuted by evidence contained in the record.[10]

As set forth above, a claimant's statement that an injury occurred at a given time, place, and in a given manner is of great probative value and will stand unless refuted by strong or

[9] *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[10] *See S.W.*, Docket No. 17-0261 (issued May 24, 2017) (the Board found that OWCP improperly determined that the alleged employment incident did not occur when appellant provided consistent accounts of the claimed incident and there was no evidence to refute her detailed description); *see also J.L.*, Docket No. 17-1712 (issued February 12, 2018).

persuasive evidence.[11] The Board finds that appellant has established that an employment incident occurred in the performance of duty on July 7, 2019 as alleged.

As appellant has established that the July 7, 2019 employment incident factually occurred, the question becomes whether this incident caused an injury.[12] As OWCP has not evaluated the medical evidence of record the case is not in posture for decision with regard to causal relationship and must therefore be remanded for consideration of the medical evidence of record. Following this and other such further development as is deemed necessary, it shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish a medical condition causally related to the accepted July 7, 2019 employment incident.[13]

CONCLUSION

The Board finds that appellant has established that an incident occurred in the performance of duty on July 7, 2019, as alleged. However, the case is not in posture for decision with regard to whether he has established a condition causally related to the accepted July 7, 2019 employment incident.[14]

[11] *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *Gregory J. Reser*, 57 ECAB 277 (2005).

[12] *See C.M.*, Docket No. 19-0009 (issued May 24, 2019).

[13] *See Betty J. Smith*, 54 ECAB 174 (2002).

[14] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 18, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board